

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

| | | |
|--------------------|---|-----------------|
| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | ID#: 0805017969 |
| |) | |
| SYE C. NEWTON, |) | |
| |) | |
| Defendant. |) | |

Submitted: January 6, 2012
Decided: January 31, 2012

ORDER

**Upon Defendant's Second Motion for Postconviction Relief –
SUMMARILY DISMISSED**

1. Defendant's first motion for postconviction relief was summarily dismissed on July 16, 2010, and Defendant did not take an appeal from that.
2. On November 1, 2011, Defendant filed a motion for a new trial, which the court dismissed as out of order on November 17, 2011.
3. The court characterized the motion as "borderline frivolous," in part, because it invoked the "Geneva Convention and other treaties"
4. When the court dismissed the motion for a new trial, it cautioned Defendant that if he filed a second Rule 61 motion:

he must do better or it will be summarily dismissed. That includes his explaining why his claims were not presented on direct appeal, during his first Rule 61 motion, or through an appeal from that motion's denial. An explanation is required by Rule 61(i)(3).

5. Defendant then filed this, his second motion for postconviction relief, on January 6, 2012. The motion relies on two claims of “newly discovered evidence.”

6. The newly discovered evidence is two affidavits from fellow inmates, allegedly supporting Defendant's claim that when he took another inmate, one of the affiants, hostage, it was all an “orchestrated” bid for attention by both of them, not a kidnapping. Defendant claims that he was unable to obtain this evidence sooner because the victim was afraid of retaliation by the Department of Correction, and the second affiant was unknown to Defendant. This new evidence has only come to light after Defendant was transferred back to the correctional facility where he could come into contact with the other inmates. Defendant, however, has not submitted the affidavits to the court.

7. The affidavits, as Defendant describes them, seem similar to an affidavit Defendant tried to use at his trial. Then, Defendant claimed to have a handwritten affidavit, signed by the victim, stating the victim consented to the

kidnapping to protest prison conditions.¹ The affidavit was not admitted because no one could testify to its authenticity.²

8. Claims of new evidence discovered in prison are common and, for obvious reason, viewed with suspicion.³ In this case the new evidence cannot be viewed at all, seeing as Defendant did not submit it with his motion.

9. As this case's original decisions explain in greater detail, Defendant held a razor blade to his cellmate's neck for hours.⁴ The victim refused to testify and was held in contempt of court.⁵ During the siege, however, the victim was cut and the State's largest correctional facility was locked-down for hours as hostage negotiators attempted to defuse the situation. The court and the jury heard all of this. The jury did not hear much about prison conditions, but it did hear that Defendant's demands included alcohol.

¹ See Trial Tr. 82:5-83:23; 85:11-88:5, Feb. 25, 2009.

² See *Newton v. State*, 991 A.2d 18, 2010 WL 922727, at *3 (Del. 2010) (TABLE) ("Newton could not seek to have the document admitted into evidence without a witness to provide some foundation for admission of the document.").

³ See *Johnson v. State*, 410 A.2d 1014, 1015 (Del. 1980) ("[P]roducts of prison atmosphere to be received with great caution.").

⁴ See *State v. Newton*, 2009 WL 807477, at *1 (Del. Super. 2009) (Silverman, J.).

⁵ See *id.* See also Trial Tr. 50:8-51:18, Feb. 24, 2009.

10. Taking the newly discovered evidence into account, especially when viewed in this case's context, it does not amount to cause, nor does it invoke Rule 61's interest of justice exception.⁶ It appears that Defendant is trying to present the excluded affidavit for reconsideration, although its exclusion was upheld on appeal.⁷ Mostly, the court wonders how the Department of Correction allowed Defendant to come into close contact with the victim, again. Anyway, Defendant's claims are entirely unsupported and, as explained above, even if he offered the support he claims to have, it would be suspect.

For the foregoing reasons, after preliminary review, Defendant's second motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal Division)
pc: Karin M. Volker, Deputy Attorney General
Sye C. Newton, Defendant

⁶ Super. Ct. Crim. R. 61(i)(2).

⁷ See *Newton v. State*, 991 A.2d 18, 2010 WL 922727, at *3 (Del. 2010) (TABLE).